

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION**  
**A SPECIAL ORDER BY CONSENT**  
**WITH**  
**TITAN VIRGINIA READY-MIX, LLC.**  
**Permit No. VA0087467**

**SECTION A: Purpose**

This is a Consent Special Order issued under the authority of §62.1-44.15(8a) and §62.1 – 44.15(8d) of the Code of Virginia between the State Water Control Board and Titan Virginia Ready-Mix, LLC., for the purpose of resolving certain violations of environmental law and/or regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in VA Code §§ 10.1-1184 and §62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “Titan” means Titan Virginia Ready Mix L.L.C., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. “Regulations” means 9 VAC 25-31-10 *et seq.* – Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
9. “Permit,” means VPDES Permit No. VA0087467.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Titan owns and operates Port Norfolk Ready Mix Concrete Plant at 101 Chautauqua Avenue, Portsmouth, Virginia. This facility is the subject of the Permit, which became effective September 3, 1997 and expires September 3, 2002.
2. §9 VAC 25-31-190 of the Regulations and Part II. L of the Permit requires that the permittee comply with all conditions of the permit.
3. §62.1-44.5. A of the Code prohibits discharges to State waters except in compliance with a certificate issued by the Board. The Permit authorizes Titan to discharge to the Western Branch of the Elizabeth River through outfalls 001, 002, and 003. Site inspections conducted by TRO Compliance staff on May 9 and May 11, 2001 revealed wastewater had been pumped out of the sedimentation pits, via a mud pump and hose, onto the ground. Titan does not have a permit to discharge wastewater onto the ground.
4. §62.1-44.5.B of the Code requires any person required to obtain a permit or certificate pursuant to this chapter to notify DEQ or the coordinator of emergency services promptly upon learning of an unpermitted discharge that may reasonably be expected to enter state waters but in no case later than 24 hours after said discovery. Titan failed to notify DEQ or the coordinator of emergency services of the discharge documented during the inspections on May 9 and May 11, 2001.
5. Part I. B (3) of the Permit requires Titan to implement an Operations and Maintenance (O&M) manual. The approved O&M manual is an enforceable condition of the Permit. The O&M Manual specifies that the wastewater in the sedimentation ponds is to be pumped to the holding tank or transferred between sedimentation ponds while cleaning the ponds; wastewater in the holding tank must be neutralized prior to discharging through Outfall 001 or can be used for dust suppression without prior neutralization. Untreated wastewater used for dust suppression shall not be allowed to pond, pool, or runoff. DEQ documented during the site visits that Titan had failed to treat and discharge wastewater from the settling basins in accordance with the O&M manual.
6. A Notice of Violation (NOV No. 01-06-TRO-006) was issued to Titan on June 26, 2001 regarding the above violations.
7. Titan maintains it did not believe that the discharge entered State waters and did not notify DEQ as required by §62.1-44.5.B.

### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in VA Code § 62.1-44.15(8a) and (8d), orders Titan, and Titan agrees, to the following:

1. Voluntarily pay a civil charge of \$2,200 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall include the Titan's Federal Identification Number. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer, Commonwealth of Virginia," and delivered to:  

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240.
2. Titan shall not be held responsible for violations of the Clean Water Act, the Virginia State Water Control Law, and the Virginia Pollutant Discharge Elimination System Permit Regulation if it can reasonably establish, to the satisfaction of the Director, that the violation and damage resulting therefrom resulted solely from activities relating to the Virginia

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Titan, for good cause shown by Titan, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Titan by DEQ on June 26, 2001. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Titan neither admits nor denies the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Titan declares it has received fair and due process under the Administrative Process Act, VA Code §2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
5. Titan consents to venue in the Circuit Court of the City of Norfolk for any civil action taken to enforce the terms of this Order.
6. Failure by Titan to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Titan shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Titan shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Titan shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. The reasons for the delay or noncompliance;
  - b. The projected duration of any such delay or noncompliance;
  - c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any

condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto; their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Titan. Notwithstanding the foregoing, Titan agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until Titan petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order.
12. By its signature below, Titan voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

Titan voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia

City/County of Norfolk

The foregoing document was signed and acknowledged before me this \_\_ day of \_\_\_\_\_, 2002, by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ of Titan, on behalf of the Corporation.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.